

**UNIFORM COMMERCIAL CODE; ARTICLE ON SALES;
<http://www.lrc.state.ky.us/KRS/355-02/328.PDF>**

355.2-328 Sale by auction.

- (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- (3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Effective: July 1, 1960

History: Created 1958 Ky. Acts ch. 77, sec. 2-328, effective July 1, 1960.

FIREARMS

The following is an excerpt from the Bureau of Alcohol, Tobacco and Firearms website (<http://www.atf.treas.gov/firearms/faq/index.htm>). The Kentucky Board of Auctioneers recommends that if a licensee has a question, they contact the US Government – Federal Information Center at 1-800-688-9889 for the office nearest your location. Go to http://www.atf.gov/pub/fire-explo_pub/gca.htm for the Gun Control Act of 1968 – Definitions for antique firearms, shotgun, rifle, etc.

(K1) Does an auctioneer who is involved in firearms sales need a dealers license?

Generally speaking, there are two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, the articles to be auctioned (including firearms) are being sold by the executor of the estate of an individual. In these cases the firearms belong to and are possessed by the executor. The auctioneer is acting as an agent of the executor and assisting the executor in finding buyers for the firearms. The firearms are controlled by the estate, and the sales of firearms are being made by the estate. In these cases, the auctioneer does not meet the definition of engaging in business as a dealer in firearms and would not need a license. An auctioneer who has a license may perform this function away from his or her licensed premises.

In consignment-type auctions, an auctioneer often takes possession of firearms in advance of the auction. These firearms are generally inventoried, evaluated, and tagged for identification. The firearms belong to individuals who have entered into a consignment agreement with the auctioneer giving that auctioneer authority to sell the firearms. The auctioneer has possession and control of the firearms. Under these circumstances, an auctioneer would generally need a license. An auctioneer who buys firearms for purposes of resale will also need a license.

(K2) If a licensed auctioneer is making sales of firearms, where may those sales be made?

Firearms may be displayed at an auction site away from the auctioneer's licensed premises and sales of the firearms can be agreed upon at that location, but delivery may only be made to purchasers after the firearms have been returned to the auctioneer's licensed premises. The simultaneous sale and delivery of the auctioned firearms away from the licensed premises would violate the law, i. e., engaging in business at an unlicensed location. However, if the auctioneer is assisting an estate dispose of firearms, the estate is the seller of the firearms, and the estate is in control and possession of the firearms, the firearms would not have to be returned to the licensed premises prior to their delivery.

DOING BUSINESS IN KENTUCKY

The employees of the Kentucky Board of Auctioneers can only respond to questions regarding KRS 330 or related regulations. The Board recommends that the licensee ask the SOURCE for all other clarifications. Most websites of the following state and federal agencies are linked at <http://auctioneers.ky.gov/relinks.html>